



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Renee Blake, Family  
Service Specialist 1 (PS2267K),  
Department of Children and Families

Bypass Appeal

CSC Docket No. 2018-2430

**ISSUED: JULY 23, 2018 (EG)**

Renee Blake appeals the bypass of her name on the Family Service Specialist 1 (PS2267K), Department of Children and Families eligible list.

The appellant, a non-veteran, appeared as the 38<sup>th</sup> ranked non-veteran eligible on the subject eligible list, which promulgated on July 28, 2016 and expires on July 27, 2019. A certification was issued on September 11, 2017 (PS171501), and the appellant was listed in the second position on the certification. In disposing of the certification, the appointing authority indicated that eligibles one, three and four were only interested in future certifications; bypassed the appellant for an unsatisfactory employment record; removed the eligible in the fifth position; and appointed the eligible in the sixth position

On appeal to the Civil Service Commission (Commission), the appellant asserts that the bypass of her name for an unsatisfactory employment record was unwarranted. She argues that she has not received any unsatisfactory ratings in her Performance Assessment Reviews (PARs). In support of this contention the appellant submits copies of her PARs from 2014 through the present, which indicate ratings of exceptional or successful.

In response, the appointing authority states that the appellant was served a Preliminary Notice of Disciplinary Action (PNDA) on August 21, 2017, imposing a 10-day suspension based on charges of incompetency, insubordination, conduct unbecoming a public employee, neglect of duty and violation of public policy. It

argues that bypassing the appellant's name for appointment was appropriate based on the pending disciplinary charges filed against her.

## CONCLUSION

*N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7, and *N.J.A.C.* 4A:4-4.8(a)3ii allow an appointing authority to select any of the top three interested eligibles on a promotional list, provided that no veteran heads the list. Moreover, it is noted that the appellant has the burden of proof in this matter. *See N.J.A.C.* 4A:2-1.4(c).

Initially, since the appellant, a non-veteran, was the first listed interested eligible name on the certification,<sup>1</sup> it was within the appointing authority's discretion to select any of the top three interested eligibles on the certification for each vacancy filled. The appointing authority indicates that the appellant was bypassed because of a pending disciplinary charge at the time of certification. Absent any unlawful motive, it is permissible for an appointing authority to consider an individual's pending discipline as a basis for bypassing her on a certification. *See In the Matter of Michael Cervino* (MSB, decided June 9, 2004). *See also, In the Matter of Gary R. Kern, et al.* (MSB, decided October 11, 2000) (It was determined that appellant was not entitled to retroactive date of appointment, nor were Civil Service law or rules violated, when the appointing authority initially bypassed him due to pending disciplinary charges that were departmentally dismissed); *In the Matter of Michael Boylan* (MSB, decided October 22, 2003) (It was within the appointing authority's discretion to bypass appellant due to two discrimination complaints filed against him, which were transmitted to the OAL for a hearing and which might have resulted in disciplinary charges). In the instant matter, the appellant has not asserted any unlawful motive for her bypass. Further, the appellant has not provided any arguments or evidence concerning the pending discipline against her. The appellant has not presented any substantive evidence regarding her bypass that would lead the Commission to conclude that the bypass was improper or an abuse of the appointing authority's discretion under the "Rule of Three." Moreover, the appointing authority presented a legitimate reason for the appellant's bypass that has not been persuasively refuted.

Accordingly, a review of the record indicates that the appointing authority's bypass of the appellant's name was proper and the appellant has not met her burden of proof in this matter.

## ORDER

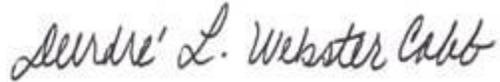
Therefore, it is ordered that this appeal be denied.

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<sup>1</sup> Eligibles one, three, four and five, whom were not interested in appointment at this time or removed from the list, were not considered interested or eligible for appointment.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 18TH DAY OF JULY, 2018



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